

OGC HAS REVIEWED.

MAY 22 1951

MEMORANDUM FOR THE RECORD

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SUBJECT: Dual Compensation [REDACTED]

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1. The Director of Training has proposed that [REDACTED] a full-time employee of the Department of the Air Force, conduct a series of lectures at CIA (see attached memorandum).

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2. Basically, the proposal is that [REDACTED] be assigned by his Air Force superiors to deliver the lectures. One full day per week will be required to prepare the lectures, and the Director of Training has requested that [REDACTED] be compensated by CIA for this outside preparation.

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3. The proposal raises a question of dual compensation, with particular reference to the following provisions of law:

"Double salaries. Unless otherwise specifically authorized by law, no money appropriated by any act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum" (5 USCA 58).

"Extra services. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law" (5 USCA 69).

"Extra allowances. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is such additional pay, extra allowance, or compensation" (5 USCA 70).

4. As recently as 1947, a Federal court pointed out that the meaning and effect of the above statutes "after more than one hundred years, are apparently still debatable," and cited numerous conflicting cases to justify such a statement (Ward v. United States, 158 Fed. 2d 499). The problem is further complicated by the fact

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that there are four different sources of "authority" on the subject -- Federal courts, the Comptroller General, the Attorney General, and the Court of Claims.

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5. Despite the controversy over the dual compensation laws, it is the opinion of the undersigned that payment of compensation to [REDACTED] under the proposed arrangement would be illegal. If Dr. [REDACTED] assigned by the Air Force to lecture at CIA, and then spends one full day per week preparing his lectures, it seems inescapable that preparation of such lectures is "connected with" his Air Force duties. However, the decisions would require that his service for CIA be "separate and distinct" from his Air Force duties. This is apparent in Woodwell v. United States, 214 U.S. 82 (1908). (See page 1 of the appendix to this memorandum).

6. Other decisions relevant to the problem are also outlined in the attached appendix, and their general import would prevent approval of the plan as submitted. However, the decisions point the way to a satisfactory solution to the problem.

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7. In view of the decisions in similar cases, I informed Mr. [REDACTED] of Training that we could not approve the proposal of the Director of Training as submitted. However, I suggested two alternative plans:

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a. That Air Force pay of [REDACTED] overtime for the time spent in preparing his lectures, and that he receive no compensation from CIA.

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b. That [REDACTED] take leave during the time he planned to deliver his lectures. This would obviate any connection between [REDACTED]'s Air Force duties and his CIA duties, and permit payment of compensation to him for his services to CIA. It would constitute a separate and distinct office. Such an arrangement could be based on decisions of the Comptroller General, particularly 28 Comptroller General 459 and 22 Comptroller General 312.

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Attachments:

Memo fr Training dtd 15 May 51
Appendix re 5 USCA 58, 69 and 70

See memo of 5 July 1951, from OGC to Dir/Training, which summarizes the prerequisites for [REDACTED] services.

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